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# HUMAN RIGHTS VIOLATIONS IN CHINA: A UNITED STATES RESPONSE

## I. INTRODUCTION

Memories of the 1989 Tiananmen Square massacre remain emblazoned in the minds of the world's people. Even though the human rights violations that persist in the wake of its aftermath continue to rouse condemnation and concern, the problem has been inadequately addressed by the international community and, especially, by the United States. As the world's leading nation, the United States must publicly and powerfully disassociate itself from the wholesale human rights violations of the Chinese government.<sup>1</sup> It is vital that the United States take an authoritative role in creating international pressure on China's government to exhibit greater respect for the inalienable human rights and freedoms of its citizens.<sup>2</sup> The most effective way for the United States to achieve this goal would be to condition the extension of Most Favored Nation ("MFN") trading status on specific human rights improvements. The conditioning of MFN status will serve as a constant reminder to the Chinese government and to the millions of Chinese citizens, who secretly support democracy, that the United States is committed to improving the human rights situation in the People's Republic of China ("China" or "PRC").<sup>3</sup>

The first section of this Note discusses the egregious violations of human rights in China since the Tiananmen Square massacre. It focuses on the relentless and systematic torture that political prisoners are forced to endure. The next section illustrates how such practices violate Chinese legal standards and established international norms. In the third section, this Note examines the failed United States' foreign policy towards China in the area of human rights during the Bush Administration as well as the efforts by Congress to condition the renewal of the China's MFN status on improvements in its human rights record. Finally, the fourth section discusses the need for the United States to re-evaluate its present position, which is to unconditionally extend MFN status to China. Developing a

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1. *China and Most Favored Nation Status*, Lawyers Committee for Human Rights, New York, N.Y., May 2, 1991, at 3.

2. *Id.*

3. *Id.*

new China policy is a task of great magnitude and complexity. It is necessary for the Clinton Administration to decide how the United States can more effectively address the horrifying human rights violations in the China in the future. A fundamental question for the Clinton Administration will be how to balance the United States' desire to preserve its improved economic and strategic relationship with China with the even greater desire to promote human rights reform in a country that continues to wantonly disregard its citizens' basic rights and freedoms.

The principal objective of this Note is to create a heightened awareness, in both the private and public sectors, of the grave human rights situation in China in hopes that repeated public accounts of the abuses will generate pressure on the Chinese government to improve its appalling record.

## II. HUMAN RIGHTS VIOLATIONS IN CHINA SINCE TIANANMEN SQUARE

On June 3 and 4, 1989, the People's Liberation Army ("PLA"), took military action to clear the thousands of students and workers who occupied the streets of Beijing and filled Tiananmen Square.<sup>4</sup> The Chinese government, in an attempt to suppress the pro-democracy movement, had ordered the PLA's action.<sup>5</sup> The Chinese government has followed the killings of June 4 with a campaign of repression, aimed at suppressing the pro-democracy movement completely, by identifying and punishing both those who participated in the demonstration and those who supported the goals of the pro-democracy movement.<sup>6</sup> It has been over five years since the sweeping crackdown in Beijing, and yet the gross human rights violations in China continue to be widespread.<sup>7</sup>

In this ongoing attempt to suppress the pro-democracy movement and to punish those persons involved, the Chinese government has violated and continues to violate, the fundamental rights and freedoms of its citizens

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4. *Massacre in Beijing, The Events of 3-4 June 1989 and Their Aftermath*, (Int'l League for Human Rights, New York, N.Y. ), Aug. 4, 1989, at 1 [hereinafter *Massacre in Beijing*].

5. *Id.*

6. *Id.*

7. *Id.*

guaranteed under international customary laws.<sup>8</sup> In particular, the government's treatment of its political prisoners directly violates the established international standards set forth in the Universal Declaration, the United Nations Convention Against Torture, the United Nations Standard of Minimum Rules for the Treatment of Prisoners, and the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment.<sup>9</sup>

According to the human rights organization Amnesty International, of the political prisoners taken during the 1989 crackdown, hundreds remain imprisoned in China.<sup>10</sup> Amnesty International has repeatedly accused China of continued widespread human rights violations, including torture and summary executions.<sup>11</sup> Amnesty International bases many of its reports on the testimony of former prisoners.<sup>12</sup>

In two recent reports, Asia Watch, the New York-based human rights organization, has also accused China of torturing political prisoners. The first report, entitled *Anthem of Defeat*,<sup>13</sup> details ill treatment of political prisoners in Hunan Province by guards and by appointed prisoners known as "cell bosses."<sup>14</sup> The second report describes the torture and deprivation endured by a group of political prisoners in the Lingyuan Labor Reform complex in Liaoning Province.<sup>15</sup> In describing the torture, both Asia

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8. *Id.*

9. *Id.* at 32.

10. A Comprehensive Report on Human Rights Violations Around the World, (Amnesty Int'l, AI Index pol.), Oct. 1, 1992, at 88 [hereinafter Human Rights Violations]; David R. Schweisberg, *China Rejects Reports on Brutality as Crackdown Continues*, UPI, June 4, 1992, available in LEXIS, News Library, UPI File.

11. Schweisberg, *supra* note 10.

12. *China Rejects German Criticisms of Human Rights Abuses*, AGENCE FRANCE PRESSE, March 12, 1992, available in LEXIS, News Library, AFPFR File.

13. *Anthem of Defeat—Crackdown in Hunan Province 1989-1992* (Human Rights Watch/Asia Watch, New York, N.Y.), 1992 [hereinafter *Anthem of Defeat*]. *Anthem of Defeat* describes varying physical and psychological abuses in Chinese prisons. The report is based largely on the experiences of political prisoner Tang Boqiao. Tang, a student leader, had been jailed for his involvement in the pro-democracy movement. While Tang was imprisoned in Hunan province, he witnessed many instances of torture, including that of an aged professor, Peng Yuzhang. *Id.* at iii.

14. *Human Rights Group Accuses China of Repression*, THE REUTER LIBRARY REPORT, May 31, 1992, available in LEXIS, News Library, LBYRPT File; see also *Human Rights Group Says China Tortures Political Prisoners*, THE WASH. POST, June 1, 1992, at A16 [hereinafter *China Tortures Political Prisoners*]; *World in Brief: Chinese Dissidents Tortured*, THE ATLANTA J. & CONST., June 1, 1992, at A11 [hereinafter *Chinese Dissidents Tortured*].

15. *China: Political Prisoners Abused in Liaoning Province as Official Whitewash of*

Watch and Amnesty International assert that guards routinely assault prisoners with electric batons, whip them with bamboo switches, and restrain them with heavy fetters in positions deliberately intended to inflict pain.<sup>16</sup> When handcuffs are used, they are made so tight that it leads to loss of blood circulation.<sup>17</sup> "In addition, deprivation of sleep or food, exposure to cold, and being made to adopt exhausting physical postures are reportedly common during interrogations."<sup>18</sup>

### A. Hunan Province

Of the one thousand activists and demonstrators detained after the June 4 incident, hundreds still remain behind prison bars in Hunan Province.<sup>19</sup> The best known political prisoners who were held in Hunan Province are the three men who defaced the portrait of Mao Tse-Tung which hangs in Tiananmen Square.<sup>20</sup> They are Yu Zhijian, Yu Dongyue and Lu Decheng.<sup>21</sup> The conditions under which these men were expected to survive were oppressive. According to Amnesty International and Asia Watch, the three men were placed in solitary confinement,<sup>22</sup> in rooms that were box-like, damp and almost pitch dark.<sup>23</sup> There was no ventilation or heating.<sup>24</sup> It was freezing in the winter and stifling hot in the summer.<sup>25</sup>

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*Labor Reform System Continues*, (Human Rights Watch/Asia Watch, New York, N.Y.), Sept. 1, 1992 [hereinafter *Political Prisoners Abused in Liaoning Province*].

16. *Anthem of Defeat*, *supra* note 13; Human Rights Violations, *supra* note 10; *Human Rights Group Accuses China of Repression*, *supra* note 14; Bentimemy, *Chinese Dissidents Tortured*, *supra* note 14, at A11; *China Tortures Political Prisoners*, *supra* note 14, at A16.

17. *Torture in China: Comments on the Official Report of China to the Committee Against Torture*, (Int'l League for Human Rights and the Ad Hoc Study Group in China, New York, N.Y.), April 1990, at 8 [hereinafter *Torture in China*].

18. Human Rights Violations, *supra* note 10, at 90.

19. *Anthem of Defeat*, *supra* note 13, at i.

20. *Id.* at 41.

21. *Id.* After Yu Zhijian, Yu Dongyue and Lu Decheng were convicted for counterrevolutionary offenses, they were sent to Hunan Provincial Prison No. 3. Yu Zhijian, a primary school teacher, was sentenced to life in prison. Yu Dongyue, a fine arts editor for a newspaper, was sentenced to twenty years in prison. Lu Decheng, a bus company employee, was sentenced to sixteen years in prison. David Holley, *Report Details Chinese Prison Brutality; Torture: Three Severely Punished for Throwing Paint on Mao*, *Rights Group Says*, L.A. TIMES, Dec. 9, 1992, at A12.

22. *Anthem of Defeat*, *supra* note 13, at 42; Holley, *supra* note 21, at A12.

23. *Anthem of Defeat*, *supra* note 13, at 42; Holley, *supra* note 21, at A12.

24. Holley, *supra* note 21, at A12.

In Amnesty International's 60-page report on torture in China's prisons, the organization graphically describes the unconscionable shackle-board method of torture used on aged Hunan University professor, Peng Yuzhang.<sup>26</sup> Yuzhang was kept on a shackle-board for three months.<sup>27</sup> A shackle-board "consists of a wooden door laid flat on four short legs with handcuffs at each corner of the board. Prisoners are attached to the board with arms and legs spread out . . . . A hole in the board allows evacuation of urine and excrement."<sup>28</sup> As a result of this type of torture, some inmates have become mentally disturbed.<sup>29</sup>

As noted previously, electrical assault is a common form of torture in Chinese prisons.<sup>30</sup> The following excerpt is another example of the cruel and unacceptable abuses political prisoners are routinely forced to endure:

The prisoner is ordered to kneel down and face the wall with his back straight and both hands raised and pressed against the wall. The guard or other official switches on the electric baton and touches it a few times against the metal cell door causing electric sparks to fly and give out a crackling sound. Once the prisoner is in state of terror and anxiety, the guard begins poking the back of his neck with the live electric baton. This makes the prisoner scream out in pain and turn his head around involuntarily begging for mercy. As a result he suffers severe shocks to the face and mouth making him whip his head back around at which time the guard will administer further shocks to the ears. The cycle is usually repeated until the victim collapses from pain or passes out.

Occasionally prisoners become so injured to electrical assault that they never pass out. In such cases, the guard holds the live electric baton steadily against a fixed point on the victim's body until the flesh starts burning and smoke begins to rise.<sup>31</sup>

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25. *Id.*

26. Holley, *supra* note 21, at A12.

27. *Id.*

28. *Id.* (citing Human Rights Violations, *supra* note 10, at 60.)

29. *Id.*

30. *Anthems of Defeat*, *supra* note 13, at 75.

31. *Id.* at 75-76.

### B. Liaoning Province

Currently, many political prisoners from the pro-democracy movement are held at Lingyuan prison, a "reform-through-labor" camp in Liaoning Province.<sup>32</sup> On September 1, 1992, Asia Watch released a report describing the physical and psychological torture of political prisoners detained in the labor camp. Asia Watch was able to report on the torture because two documents, detailing the abuses in Lingyuan, were smuggled out of the prison in July by pro-democracy campaigners and subsequently obtained by the organization.<sup>33</sup> The letters charge that prisoners are often beaten, shocked with 50,000-volt electric cattle prods and forced to work fourteen hour days making matchboxes without even a drink of water.<sup>34</sup>

The most well-known political prisoner in Lingyuan Labor Reform No. 2 Detachment was Liu Gang,<sup>35</sup> "a close colleague and collaborator of Wang Juntao and Chen Ziming."<sup>36</sup> Both Juntao and Ziming were sentenced to thirteen years for their alleged role as the "black hands" behind the Tiananmen Square demonstrations.<sup>37</sup> Liu Gang was placed in isolation in the "strict regime" unit.<sup>38</sup> This unit is directly under the labor reform detachment, "where prisoners are tortured and controlled by common criminals trusted by the prison authorities."<sup>39</sup> Gang was put under the "strict regime" twice.<sup>40</sup> The more recent time occurred in November 1991 when he launched a hunger strike to protest the Chinese government's White Paper on Human Rights. Twelve political prisoners joined him.<sup>41</sup> It has been reported that Gang had his arm broken by the

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32. *Political Prisoners Abused in Liaoning Province*, *supra* note 15, at 2.

33. *Id.* at 1; *see also*, David Holley, *Dissident Detained in China*, L.A. TIMES, Sept. 1, 1992, at A4.

34. *China Accused of Torturing Political Prisoners*, CHI. TRIB., Sept. 1, 1992, at C5; Cindy Galbraith Curley, *Questions for China's Visiting Ambassador*, STAR TRIB., Sept. 18, 1992, at A19; Ben Tierney, *China Torturing Dissidents, Smuggled Papers Revealed*, THE GAZETTE (MONTREAL), Sept. 1, 1992, at A1.

35. Liu Gang, a 30 year old physicist, was sentenced in January 1991 to a six year prison sentence for engaging in counterrevolutionary conspiracy to subvert the government. *Political Prisoners Abused in Liaoning*, *supra* note 15, at 4; *China Accused of Torturing Political Prisoners*, *supra* note 34, at C5.

36. *Political Prisoners Abused in Liaoning Province*, *supra* note 15, at 2.

37. *Id.*

38. *Id.* at 21.

39. *Id.* at 21.

40. *Id.* at 20-21.

41. *Id.* at 8, 20-21. China's White Paper on Human Rights was issued in November

guards and was force-fed by pushing tubes down his esophagus in response to his hunger strike.<sup>42</sup>

The White Paper on Human Rights in China was a "brief account of China's basic position on . . . human rights," issued by the Chinese government "[i]n order to help the international community to understand the human rights situation in China."<sup>43</sup> A promising account of Chinese human rights was included in the White Paper.<sup>44</sup> Gang and the other prisoners found that their treatment in no way resembled that which was described in the official propaganda.<sup>45</sup> When in isolation, Gang was barred from seeing his loved ones and his letters were confiscated.<sup>46</sup> It was reported that Gang was kept in twenty pound leg irons, regularly beaten, and made to sit on a cement floor for hours on end to "reflect."<sup>47</sup> In addition, the guards reportedly forced Gang to sit motionless on a bench from 8 a.m. until 9 p.m. each day, which, not surprisingly, caused painful swelling in his legs.<sup>48</sup> Moreover, prison authorities refused to see that Gang received adequate medical attention.<sup>49</sup> Gang was blatantly being denied his fundamental human rights guaranteed under various international instruments.<sup>50</sup> With each day Gang remained in prison, the severity of his treatment increased.<sup>51</sup>

There are also many political prisoners in Lingyuan, less well-known than Gang, who had equally devastating ordeals to recount. For example,

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1991 by the Information Office of the State Council of the P.R.C. *China's White Paper on Human Rights: A Critique of Chapter IV on "Guarantee of Human Rights in China's Judicial Work,"* (Lawyers Committee for Human Rights, New York, N.Y.), March 1992 [hereinafter *China's White Paper on Human Rights*]; Nicholas D. Kristof, *Imprisoned China Pro-Democrats Charge Torture*, N.Y. TIMES, Sept. 1, 1992, at A11.

42. *Getting Down to Business: The Human Rights Responsibilities of China's Investors and Trade Partners*, (Int'l League for Human Rights, New York, N.Y.), July 1992, at 38 [hereinafter *Getting Down to Business*].

43. *China's White Paper on Human Rights*, *supra* note 41, at 1.

44. Tierney, *supra* note 34, at A1.

45. *Political Prisoners Abused in Liaoning Province*, *supra* note 15, at 8.

46. *Id.* at 9.

47. *Id.* at 21; *see also*, Kristof, *supra* note 41, at A11.

48. *Political Prisoners Abused in Liaoning Province*, *supra* note 15, at 20.

49. *Id.* at 22.

50. *See generally Political Prisoners Abused in Liaoning Province*, *supra* note 15.

51. *Id.*



in 1991, political prisoners Tang Yuanjuan, Leng Wanbao<sup>52</sup> and An Fuxing<sup>53</sup>

were confined in tiny solitary confinement cells measuring two meters by a meter. It was cold and damp. They were tortured continuously, stripped naked, held down on the floor and assaulted repeatedly with several high voltage (varying from 10,000 to 50,000 volts) electric batons simultaneously administered to their head, neck, shoulders, chest, belly, armpit, inside part of the leg, and fingers.<sup>54</sup>

This routine torture and humiliation of prisoners violates internationally - accepted human rights standards.<sup>55</sup> In sum, China's human rights practices remain repressive, falling short of internationally accepted norms.

### III. INTERNATIONAL CUSTOMARY LAWS GOVERNING HUMAN RIGHTS

The facts narrated in the first section make it apparent that the Chinese government repeatedly violates the basic rights and freedoms of its citizens. Among the rights violated are a number of human rights guaranteed under international law. One such right is the right not to be subjected to "torture or to cruel, inhuman or degrading treatment or punishment."<sup>56</sup>

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52. *Id.* at 15. Tang Yuanjuan, an assistant engineer, was arrested June 10, 1989 and convicted of "organizing and leading a counterrevolutionary group" and conducting "counterrevolutionary propaganda and incitement." He was sentenced to a fixed prison term of 20 years with five years' subsequent deprivation of political rights. *Id.* Leng Wanbao was arrested on June 10, 1989 and convicted for the crimes of engaging in "counterrevolutionary incitement" and "actively participating in the activities of a counterrevolutionary group." He was sentenced to a fixed prison term of eight years with three years subsequent deprivation of political rights. *Id.*

53. *Id.* at 16. An Fuxing, a 40 year old cadre from the Jilin Chemical Industry Corporation, was charged and convicted for "organizing and leading a counterrevolutionary group." He was sentenced to a fixed prison term of five years with two years subsequent deprivation of political rights. *Id.*

54. *Id.* at 7.

55. *Prominent U.S. Scientist Urge End to Chinese Gulag*, AGENCE FRANCE PRESSE, Oct. 21, 1992, available in LEXIS, News Library, AFPFR File.

56. *Universal Declaration of Human Rights*, G.A. Res. 217, U.N. GAOR, 3d Sess., U.N. Doc. A/810 (1948), Art. 5 [hereinafter *Universal Declaration*].

The principal international forum for airing concerns about such human rights violations is the United Nations ("UN").<sup>57</sup> Within the UN, the Economic and Social Council ("ECOSOC") is primarily responsible for furthering efforts in the area of human rights.<sup>58</sup> In 1945, the ECOSOC founded the Commission on Human Rights.<sup>59</sup> "The Commission on Human Rights became the first international body empowered to promote human rights all over the world's peoples."<sup>60</sup>

In December 1948, the General Assembly adopted the Universal Declaration of Human Rights<sup>61</sup> ("Universal Declaration"), which was proposed by the Commission on Human Rights, as a way of addressing specific concerns of the international community. "[This] document represents the first global statement providing an objective standard for measuring human rights performances of governments and it implicitly affirms that human rights are of international concern, not merely an internal matter of sovereign states."<sup>62</sup> The Universal Declaration is accepted by the international community as "an authoritative guide to the interpretation of the human rights provisions of the UN Charter."<sup>63</sup> Although the Universal Declaration is not a legally binding document, the principles embodied in it are embraced by nearly all the world's people.<sup>64</sup> The Universal Declaration is universally accepted as a "common standard of achievement for all peoples of all nations."<sup>65</sup>

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57. Jeffrey A. McCredie, *Human Rights Concerns in the P.R.C.: An Appraisal of Recent Events*, 3 TEMP. INT'L & COMP. L.J. 220 (1990).

58. U.N. CHARTER art. 55.

59. HOWARD TOLLEY, JR., THE U.N. COMMISSION ON HUMAN RIGHTS 9 (Westview 1978). The Commission consists of 43 members, representatives of various governments, who are elected to three year terms. The commission meets annually for a period of five or six weeks. *Business as Usual . . . ? : The International Response to Human Rights Violations in China* (Int'l League for Human Rights, New York, N.Y.), May 1991, at 62 [hereinafter *Business As Usual*].

60. TOLLEY, *supra* note 59, at xiii.

61. *Universal Declaration*, *supra* note 56. The Universal Declaration, a document made up of only thirty articles, has remained the foundation for all United Nations activities concerning human rights. J. HERMAN BURGERS & HANS DANIELIUS, THE UNITED NATIONS CONVENTION AGAINST TORTURE: A HANDBOOK ON THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT 6 (1988).

62. McCredie, *supra* note 57, at 221 (citing Remarks of Richard S. Williams, Asst. Sec. for Int'l Org. Affairs in U.S. Commemorates 40th Anniversary of the Universal Declaration of Human Rights, U.S. Dep't of State, Selected Documents No. 34 at 2).

63. *Id.*

64. *Id.*

65. R. RANDLE EDWARDS ET AL., HUMAN RIGHTS IN CONTEMPORARY CHINA 6

"When China was admitted to the United Nations [in 1971], it assumed an obligation under the UN Charter to take joint and separate action to promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all."<sup>66</sup> "It is also bound by established human rights standards which are part of international customary law" to guarantee its citizens enjoyment of all rights enshrined in the Universal Declaration.<sup>67</sup>

Article 5 of the Universal Declaration provides that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."<sup>68</sup> Based on the information available, it is apparent that the Chinese government has wantonly disregarded its obligation under the Universal Declaration to ensure that its citizens are free from such abuse.

The Universal Declaration has greatly inspired the creation of a number of international human rights covenants and conventions,<sup>69</sup> including the Standard Minimum Rules for the Treatment of Prisoners<sup>70</sup> and the Convention Against Torture and Other Forms of Cruel, Inhuman and Degrading Treatment and Punishment ("The Convention Against Torture").<sup>71</sup> The UN Standard of Minimum Rules for the Treatment of Prisoners was adopted by the UN Economic and Social Council in 1957.<sup>72</sup>

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(1986) [hereinafter CONTEMPORARY CHINA].

66. *Massacre in Beijing*, *supra* note 4, at 46.

67. *Id.* (China became a member of the United Nations in 1971). See McCredie, *supra* note 57, at 224 (China was not an official member of the United Nations during the adoption of the Universal Declaration); see AMNESTY INT'L, AI Index ASA 17/60/89, P.R.C.: PRELIMINARY FINDINGS ON KILLINGS OF UNARMED CIVILIANS, ARBITRARY ARRESTS AND SUMMARY EXECUTIONS SINCE JUNE 3, 1989 (August 1989 Report)[hereinafter PRELIMINARY FINDINGS].

68. *Universal Declaration*, *supra* note 56, art. 5.

69. McCredie, *supra* note 57, at 222.

70. *Standard Minimum Rules for the Treatment of Prisoners*, E.S.C. Res. 663 C (XXV), U.N. ESCOR, 24th Sess., 994th plen. mtg. at 11. U.N. Doc. E/3048 (1957).

71. McCredie, *supra* note 57, at 223.

72. AMNESTY INT'L PUBLICATIONS, CHINA: VIOLATIONS OF HUMAN RIGHTS 99 (1984). The UN Standard of Minimum Rules for the Treatment of Prisoners provides in article 31 that "corporal punishment, punishment in a dark cell, and all cruel inhuman degrading punishment shall be completely prohibited for disciplinary offenses." In addition, article 33 provides that "instruments of restraint, such as handcuffs, chains, irons and strait jackets shall never be applied as a punishment," and article 37 states that "prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits." *Id.*

The Convention Against Torture was adopted by the UN General Assembly in December 1984.<sup>73</sup> Implementation of the Convention Against Torture is monitored by the Committee Against Torture.<sup>74</sup> China signed the Convention Against Torture on December 12, 1986 and it entered into force on November 3, 1988.<sup>75</sup> In adhering to this Convention and many other international human rights treaties<sup>76</sup> and in undertaking their substantive obligations, China "accepts the legitimacy of international concern" over the way it treats its citizens.<sup>77</sup> It also "accepts the legitimacy of international supervision of its human rights performance."<sup>78</sup>

"China has also participated extensively in the human rights bodies of the UN since its admission."<sup>79</sup> For example, China is a member of both the Economic and Social Council and the Commission on Human Rights.<sup>80</sup> Therefore, as a member of the UN, a member of the Commission on Human Rights, and a party to many other UN human rights treaties, the PRC has a responsibility to provide to its own citizens the human rights guarantees specified in the Universal Declaration and other relevant UN treaties.<sup>81</sup>

#### IV. CHINA'S CONSTITUTION AND RELEVANT LEGAL CODES

Chinese tradition has been the most severe obstacle in bringing about acceptable human rights conditions in China.<sup>82</sup> Traditionally, China did not emphasize the individual or individualism and this omission is made plain by much of the language used in the Constitution of the PRC. The most recent Chinese Constitution, adopted on December 4, 1982 by the

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73. Convention Against Torture and Other Forms of Cruel, Inhuman and Degrading Treatment or Punishment, adopted December 10, 1984, G.A. Res. 46, U.N. GAOR, 39th Sess., U.N. Doc. E/CN4/L2 (1984).

74. *Torture in China*, *supra* note 17, at 1.

75. *Id.*

76. China has also adhered to the International Convention on the Elimination of All Forms of Racial Discrimination (1981), the Convention on the Elimination of All Forms of Discrimination Against Women (1981), and the Convention Against Genocide (1983). *Massacre in Beijing*, *supra* note 4, at 46.

77. *Id.*

78. *Id.*

79. *Id.* at 47.

80. *Id.*

81. *Id.*

82. CONTEMPORARY CHINA, *supra* note 65, at 35.

Fifth National People's Congress in its Fifth Session,<sup>83</sup> is the "fundamental law of [the] state and it has the Supreme legal authority."<sup>84</sup> The Chinese Constitution does not purport to be a "contract among people establishing the state, or a contract between the government and the people setting forth the conditions under which the people are prepared to be governed."<sup>85</sup> Rather "it is a manifesto by the leaders to the people, describing the society that exists and its institutions, and proclaiming its values, goals, and aspirations."<sup>86</sup> In effect, it is a blueprint of a government the leadership has established.<sup>87</sup>

The revised text of the 1982 Constitution, like the Constitutions of 1978, 1975, and 1954, contains an impressive number of basic rights such as the freedom of speech, press, assembly, association, procession, and demonstration.<sup>88</sup> The rights<sup>89</sup> enumerated above "correspond to most of the rights recognized in the Universal Declaration."<sup>90</sup> There are, however, significant differences between the human rights specifically guaranteed under international customary law and those recognized in the Constitution.<sup>91</sup> For example, there is no mention of freedom from torture or degrading treatment. However, international human rights standards provide that every person has the right to be free from "torture or . . . cruel, inhuman or degrading treatment or punishment."<sup>92</sup>

It is alleged that China does better in practice with respect to human rights than its constitution promises.<sup>93</sup> But this conduct remains to be seen. Even though there is little chance that Chinese society will "abandon traditional values and make the individual human being the focus of societal concern," international human rights standards do not demand

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83. XIANFA (1982) [Constitution] (P.R.C.) *translated in* CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (Albert P. Bloustein & Gisbert H. Flanz eds., 1992).

84. CONTEMPORARY CHINA, *supra* note 65, at 27.

85. *Id.* at 26.

86. *Id.* at 27.

87. *Id.*

88. XIANFA, *supra* note 83, art. 35.

89. "The Chinese conception of rights are benefits granted by the society as an aspect of life in socialist society." CONTEMPORARY CHINA, *supra* note 65, at 27.

90. *Id.* at 30.

91. *Id.*

92. Universal Declaration, *supra* note 56, art. 5.

93. CONTEMPORARY CHINA, *supra* note 65, at 33; *China Forbids Humiliating, Maltreating Prisoners*, The Xinhua General Overseas News Service, Aug. 11, 1992, available in LEXIS, News Library, XINHUA File.

a "particular ideological commitment, only a willingness to respect and ensure" the freedoms and benefits articulated in the Universal Declaration.<sup>94</sup>

### A. Chinese Legal Codes

In 1954, the Law on Reform Through Labour was promulgated.<sup>95</sup> Article 5 of this law guarantees various protections and rights to prisoners, including the protection from "cruel treatment and torture."<sup>96</sup> In addition, under Article 47, guards and other prison officials are criminally liable for any "erroneous use of weapons which constitutes a criminal act."<sup>97</sup> Having such laws in effect is a step in the right direction. However, since it has been widely reported that political prisoners continue to endure relentless and systematic torture by guards and other prison officials, little credence can be given to such laws and these feeble efforts should not be commended.

In 1979, China adopted its Criminal Law<sup>98</sup> and Law on Criminal Procedure.<sup>99</sup> These laws and regulations form the present criminal legal system in China. The provisions of Article 32 of the Criminal Procedure Law of China declare that "it shall be strictly forbidden to extort confessions by torture and to collect evidence by threat . . . ."<sup>100</sup> Article 136 of the Criminal Law provides for imprisonment of state functionaries who extract a confession by torture.<sup>101</sup> Even though these provisions address the issue of torture, China needs to introduce procedures to ensure protection of prisoners against cruel treatment and punishment in accordance with established international standards.

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94. CONTEMPORARY CHINA, *supra* note 65, at 38.

95. AMNESTY INT'L PUBLICATIONS, POLITICAL IMPRISONMENT IN THE PEOPLE'S REPUBLIC OF CHINA 80 (1978) [hereinafter POLITICAL IMPRISONMENT].

96. *Id.* at 79.

97. *Id.* at 79-80.

98. Criminal Law of the People's Republic of China, Chinalaw No. 39, July 1, 1979, available in LEXIS, Asiapc Library, CHINAL File [hereinafter Criminal Law].

99. Criminal Procedure Law of the People's Republic of China, Chinalaw No. 40, July 1, 1979, available in LEXIS, Asiapc Library, CHINAL File.

100. *Id.*

101. Criminal Law, *supra* note 98, art. 136.

## V. THE RESPONSE OF THE CHINESE GOVERNMENT

Chinese officials have repeatedly asserted that they consider the discussion of human rights concerns by foreign governments to be an interference in Chinese internal affairs.<sup>102</sup> This argument is indefensible in light of present international laws.<sup>103</sup>

On December 1, 1989, China, as a new signatory of the UN's Convention Against Torture, tendered its first report to the Committee describing its progress towards compliance therewith.<sup>104</sup> The report begins by asserting that "[t]he People's Republic of China has *always* attached great importance to protecting the rights of the person and democratic rights of its citizens, and is resolute in opposing torture and other cruel, inhuman or degrading treatment or punishment."<sup>105</sup> The report creates the impression that the use of torture by Chinese law enforcement figures is an aberration rather than standard procedure.<sup>106</sup> However, Asia Watch and former prisoners maintain that torture is a routine element of law enforcement.<sup>107</sup> The government asserted that torture is "prohibited by law"; it also asserted that any cases of torture are isolated events and that various governmental authorities "have taken effective steps to bring the problem under control."<sup>108</sup> However, the measures taken apparently have not had their intended effect.<sup>109</sup> More importantly, despite the laws which formally prohibit torture, torture of political prisoners is still widespread in China today.<sup>110</sup>

In November 1991, the government of China, in its White Paper on Human Rights, reiterated its established position that the rights and privileges that a country affords its people are a matter of that country's

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102. *Massacre in Beijing*, *supra* note 4, at 46.

103. *Id.*

104. *Torture in China*, *supra* note 17, at 1. "Under article 19 of the Convention, a state party undertakes to submit to the Committee Against Torture (which monitors implementation of the Convention) within one year after the Convention enters into force for that state a report on the measures it has taken to give effect to its obligations under the Convention." *Id.*

105. *Id.* at 3.

106. *Id.* at 5.

107. *Political Prisoners Abused in Liaoning Province*, *supra* note 15.

108. *Torture in China*, *supra* note 17, at 5.

109. *Id.* at 1, 5; *Political Prisoners Abused in Liaoning Province*, *supra* note 15; *Anthems of Defeat*, *supra* note 13.

110. *Political Prisoners Abused in Liaoning Province*, *supra* note 15; *Anthems of Defeat*, *supra* note 13.

internal affairs.<sup>111</sup> Yet, the very issuance of the White Paper signifies that the government realizes that it must reply to the international community's charges that egregious human rights violations are taking place in China.<sup>112</sup>

As late as June 1992, Chinese officials reported "that most prisoners are treated well and that only isolated instances of torture occur."<sup>113</sup> The Chinese government continues to contend that torture is prohibited and the rights of prisoners are respected.<sup>114</sup> However, it is difficult to give credence to the government's contentions because China has refused to let international groups visit the prisoners or see the jails, with the exception of a few model facilities such as Beijing No. 1 Prison.<sup>115</sup>

In an official report issued August 11, 1992, the Chinese government attempted to refute Western accusations of torture in its prisons and labor camps. The report, entitled the "White Paper on Criminal Reform," purportedly reveals what life behind bars is like for political prisoners.<sup>116</sup> The report stated, "China respects prisoners' human dignity and allows no torture, humiliation or maltreatment of prisoners."<sup>117</sup> In addition, the report asserted that China rigorously enforces its rules prohibiting torture and abuse of prisoners.<sup>118</sup> Amnesty International termed this "a distorted view" of prisoners' conditions in China.<sup>119</sup> The human rights organization noted that the report "failed to address the numerous accounts of torture" from former prisoners.<sup>120</sup> Asia Watch claimed the report "deviated from reality."<sup>121</sup>

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111. *China's White Paper on Human Rights*, *supra* note 41, at 1.

112. *Id.* at 107.

113. *China Tortures Political Prisoners*, *supra* note 14, at A16; *Chinese Dissidents Tortured*, *supra* note 14, at A11; *Human Rights Group Accuses China of Repression*, *supra* note 14.

114. *Human Rights Group Accuses China of Repression*, *supra* note 14.

115. *China Tortures Political Prisoners*, *supra* note 14, at A16; *Chinese Dissidents Tortured*, *supra* note 14, at A11; Nicholas D. Kristof, *China Report Sees Prison as One Big Happy Jail*, N.Y. TIMES, Aug. 17, 1990, at A7.

116. *China Defends Its Prison System*, Reuter Library Report, Aug. 11, 1992, available in LEXIS, News Library, LBYRPT File.

117. *Id.*

118. *Id.*

119. *Id.*

120. Robbie Barnett, *Beijing Accused of 'Serious Abuses' at UN Conference*, S. CHINA MORNING POST, Aug. 19, 1992, available in LEXIS, News Library, SCHINA File.

121. *Peking's White Paper of Prisoners' Reform Denounced*, CENT. NEWS AGENCY, Aug. 21, 1992, available in LEXIS, News Library, CENEWS File.



## VI. UNITED STATES FOREIGN POLICY

Incessant maltreatment and torture of political prisoners in China, in violation of both Chinese legal standards and internationally accepted norms, requires the United States to take concrete steps to pressure China into improving its human rights record. The United States is in an ideal position to promote human rights in China through the influential vehicle of Most Favored Nation ("MFN") trading status.<sup>122</sup> MFN status, which China has enjoyed since 1980, allows China to export goods to the United States at tariff rates no higher than those given to the United States' principal trading partners.<sup>123</sup> Renewal of MFN status is the most significant lever available to the United States government to promote human rights reform in China, "because the United States does not provide the Chinese government with military or significant economic aid."<sup>124</sup> The importance of MFN trading status to China is clear: it enabled Beijing to export 19 billion dollars' worth of products to the United States in 1991 alone.<sup>125</sup> As is persuasively pointed out by the Lawyers Committee for Human Rights, "past experience indicates that the threat of clearly-articulated sanctions, and if necessary their implementation, can be effective in bringing about positive human rights developments."<sup>126</sup>

*A. The Approach of the Bush Administration*

The United States' response to the repressive human rights practices in China has been ineffective and inadequate. Initially, this inadequacy was largely due to former President Bush's reluctance to adopt strong measures to advance human rights reform in China. Since the June 4,

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122. Under the 1975 Jackson-Vanik Amendment to Section 402 of the Trade Act of 1974, countries with non-market economies that deny their citizens "the right or opportunity to emigrate," are prohibited from receiving MFN status. The President may waive this restriction under certain conditions conducive to improved emigration. However, "MFN determinations have often taken into account other human rights considerations." *Business as Usual*, *supra* note 59, at 40 n. 134. Since 1980, the Jackson-Vanik Amendment has been waived with respect to China. *China and Most Favored Nation Status*, *supra* note 1, at 2.

123. *Id.* at 40.

124. *Getting Down to Business*, *supra* note 42, at 1.

125. See *id.*; *Asia-Pacific: Many Want Clinton to Leave Things the Way They Are*, INTER PRESS SERVICE, Nov. 5, 1992, available in LEXIS, News Library, INPRES File.

126. *China and Most Favored Nation Status*, *supra* note 1, at 1.

1992, Tiananmen Square massacre, President Bush annually extended MFN status to China despite the repeated attempts by a Democratic Congress to strip China of its MFN status.<sup>127</sup> President Bush, who served as chief diplomat to Beijing in 1974-1975, displayed exceedingly greater tolerance for China's unacceptable human rights record than he did for any other nation.<sup>128</sup>

The overall stance of the Bush Administration had been one of renewing political and economic ties with the aging leaders of China—a policy termed “constructive engagement”—to address human rights concerns.<sup>129</sup> The Bush Administration repeatedly defended this lenient approach as the best way of encouraging China's progress in the area of human rights. President Bush maintained that it would be have been “wrong to isolate China if we hope[d] to influence China.”<sup>130</sup> “This policy was supposed to draw China into the community of nations and bring it closer to democracy.”<sup>131</sup> But, after three years of the Administration's efforts to promote human rights improvements through its conciliatory constructive engagement policy, violations of fundamental human rights remained customary in China.<sup>132</sup>

Since the Tiananmen Square massacre, “the annual extension of MFN trading status to China has produced a fight between the President and Congress.”<sup>133</sup> In 1991 and 1992, Congress passed resolutions that would have made China's MFN status contingent upon specified improvements in human rights practices.<sup>134</sup> However, President Bush vetoed the resolutions, and each time, the vetoes were sustained.<sup>135</sup> It is important to note that when President Bush was truly anxious about getting something from China, for example greater market access or changes in copyright laws, he was willing to threaten sanctions, and not surprisingly

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127. Andrew Quinn, *China Shivers at Possible Clinton Victory*, The Reuter Library Rep., Oct. 22, 1992, available in LEXIS, News Library, LBYRPT File.

128. Susan Cornwell, *Bush Tells Congress He Will Renew China's Trade Status*, The Reuter Business Rep., June 2, 1992 available in LEXIS, News Library, BUSRPT File.

129. *Getting Down to Business*, *supra* note 42, at 40; Thomas L. Friedman, *Bush Trade Benefits for China*, N.Y. TIMES, June 3, 1992, at A13.

130. Friedman, *supra* note 129, at A13.

131. *Clinton Comments on China Trade Status*, U.S. NEWSWIRE, Sept. 15, 1992.

132. *Getting Down to Business*, *supra* note 42, at 7.

133. Friedman, *supra* note 129, at A13.

134. *Know Who You're Pulling for*, Star Tribunal, Sept. 27, 1992, at A22, available in LEXIS, News Library, STRIB File.

135. *Id.*

he obtained results.<sup>136</sup> By law, the President is required to notify Congress, by June 3 of each year, whether he plans to renew China's MFN status.<sup>137</sup> Each year after the Tiananmen Square tragedy, President Bush notified Congress of his intention to extend MFN status to China.<sup>138</sup> He vehemently opposed Congressional efforts to revoke China's MFN status. He also opposed conditioning renewal of MFN on China's compliance with specific human rights measures. The Administration argued that "even conditioning—let alone revoking—China's trading privileges would hurt both American business and the reformers and entrepreneurs in China we seek to help."<sup>139</sup>

### B. Congress

Since Beijing crushed the pro-democracy movement, Democrats and Republicans in Congress have come together to restrict China's trade benefits.<sup>140</sup> In the years since the Tiananmen Square uprising, Congress has created numerous bills binding political conditions to China's MFN status.<sup>141</sup> "The Senate has voted more than twenty times since June 1989 on China and its policies."<sup>142</sup> However, despite the strong opposition to the President "in both the House and the Senate, President Bush was able to muster enough support in the Senate to prevent limits on China's MFN status from being enacted into law."<sup>143</sup>

### C. History of Proposed Legislation

From May 1990 through October 1990, Congress engaged in intense debates over the renewal of MFN status for China. During that time, the House of Representatives passed two bills: one denying China MFN status

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136. Mike Jendrzeczyk, *No Waffling on China*, WASH. POST, Feb. 16, 1993, available in LEXIS, Exec Library, WPOST File.

137. *Getting Down to Business*, *supra* note 42, at 13.

138. Friedman, *supra* note 129, at A13.

139. *Clinton Comments on China Trade Status*, *supra* note 131.

140. Letter from Congresswoman Nancy Pelosi, Sept. 18, 1992; Joyce Barrett, *Bush to Get China MFN Bill; Most Favored Nation*, WKLY. HOME FURNISHINGS NEWSPAPER, Sept. 28, 1992, at 38.

141. Strobe Talbott, *America Abroad, How Not to Break China*, TIME, Aug. 3, 1992, at 53.

142. Joyce Barrett, *Lawmakers Plan Conditions for China MFN; Most Favored Nation Trading Status*, WKLY. HOME FURNISHINGS NEWSPAPER, June 15, 1992, at 34.

143. *Id.*

and the other linking the renewal of MFN status to certain human rights achievements.<sup>144</sup> However, the Senate was unable to vote on either bill before adjourning.<sup>145</sup>

In 1991, both the House and the Senate passed legislation that made the renewal of MFN status for China conditional on human rights reform.<sup>146</sup> Congresswoman Nancy Pelosi (D-Cal.)<sup>147</sup> "introduced legislation that opposed the extension of MFN for China in 1992" unless China made "significant progress in ending human rights violations."<sup>148</sup> The bill called on China to comply with very specific, detailed conditions.<sup>149</sup> The House approved the bill by a veto-proof margin.<sup>150</sup>

Senate Majority Leader George J. Mitchell (D-Me.) sponsored a bill that, in part, demanded that China sharply improve its human rights record.<sup>151</sup> However, the Senate version fell short of the number of votes needed to override an assured presidential veto.<sup>152</sup> In April 1992, a different version of the 1991 bill, seeking to condition renewal of MFN, passed through the House by an substantial margin. The bill was accepted by the Senate but again failed to gather the two-thirds vote needed to override the President's March 2, 1992 veto.<sup>153</sup>

The debate over China's MFN status resumed again following President Bush's June 2, 1992 decision to renew China's preferential

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144. *Business as Usual*, *supra* note 59, at 41; *Getting Down to Business*, *supra* note 42, at 13; Frank Viviano, *Pelosi Will Revive Her China Trade Bill Favored Status Pegged to Human Rights*, S.F. CHRON., May 2, 1991, at A16 (the bill sponsored by Congresswoman Pelosi (D-Cal.) passed the House by a 384 to 30 vote). *Bill Introduced in House to Tie MFN for Peking to Human Rights*, CENT. NEWS AGENCY, May 3, 1991.

145. *Business as Usual*, *supra* note 59, at 41.

146. *Getting Down to Business*, *supra* note 42, at 13.

147. Congresswoman Pelosi has been one of the leading critics of China's human rights record. She has been at the forefront of the fight against unconditional renewal of MFN for China. She chairs the Congressional working group on (Red) China in the House of Representatives and is a co-chair of the Democratic Platform Committee. *Bush Urged to Push for Human Rights Improvements in Red China*, CENT. NEWS AGENCY, Oct. 12, 1991; Frank Sesno, *Presidential Policy on China—How Does It Cut?*, CNN TRANSCRIPTS, Oct. 1, 1992.

148. *US Business Groups Rally for Renewing MFN Status for Peking*, CENT. NEWS AGENCY, May 7, 1991.

149. *Business as Usual*, *supra* note 59, at 42.

150. 137 CONG. REC. H5369 (daily ed. July 10, 1991).

151. *Senate Says No to Bush China Policy*, L.A. TIMES, July 24, 1991, at 1.

152. *Getting Down to Business*, *supra* note 42, at 13.

153. *Id.* at 13-14.

trade status. The President informed Congress that he intended to renew China's MFN status for another year, despite Beijing's disappointing record on human rights.<sup>154</sup> Immediately thereafter, both the House and the Senate voiced their disapproval. The Congress expressed its dissatisfaction with President Bush's policy decision by proposing a bill that made extending China's trade privileges for 1993 contingent on certain specific improvements in China's human rights practices.<sup>155</sup>

The House of Representatives adopted bill H.R. 5318 on July 21, 1992 by an expected large majority.<sup>156</sup> The bill was authored by Congressman Donald Pease (D-Ohio) and was sponsored by Congresswoman Pelosi.<sup>157</sup> This bill, too, linked renewal of China's MFN trading status in 1993, in part, to human rights improvements. The submitted legislation sought to impose assessable and effective human rights conditions on the extension of MFN, including the liberation of political prisoners and putting "an end to religious persecution."<sup>158</sup> This bill was dramatically different from the bills of previous years, which sought to condition renewal of China's MFN status, "in that it would only revoke MFN status for state-owned enterprises or exporters" if the Chinese leaders did not comply with specific human right requirements.<sup>159</sup> "This initiative abandon[ed] the 'all or nothing' approach" that was a common feature of past legislation.<sup>160</sup> The new bill targeted state-owned enterprises in order to address concerns raised in connection with previous bills.<sup>161</sup> Critics argued that conditioning China's MFN status on specific human rights improvements would ultimately hurt the growth of private business in China.<sup>162</sup> The new bill, however, would have served to "penalize the [Chinese] government for failing to improve the human

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154. *Id.* at 14; *Bush Tells Congress He Will Renew China's Trade Status*, *supra* note 128.

155. Friedman, *supra* note 129, at A13. Senate Majority Leader George J. Mitchell (D-Me.), House Majority Leader Richard A. Gephardt (D-Mo.), Congresswoman Pelosi (D-Ca.), and Congressman Donald Pease (D-Ohio) were the sponsors of the bill. *Id.*

156. *House Votes to Remove China MFN Status, Attach Conditions in 1993*, INT'L TRADE REP. (BNA) NO. 30 at 1243 (July 22, 1992) [hereinafter *House Votes*].

157. Talbott, *supra* note 141, at 53.

158. *Getting Down to Business*, *supra* note 42, at 14.

159. *House Votes*, *supra* note 156.

160. *Getting Down to Business*, *supra* note 42, at 14.

161. Letter from Congresswoman Nancy Pelosi to the Honorable Robert E. Wise, Jr. 1 (Sept. 18, 1992).

162. *Getting Down to Business*, *supra* note 42, at 14.

rights situation, without hurting the positive forces for change in China represented by the non-state sector."<sup>163</sup>

The Senate approved its version of the bill on September 14, 1992. This bill, like that of the legislation passed by the House in July, placed stringent conditions on the continuation of China's MFN status.<sup>164</sup> A compromise bill, which received broad support in Congress, was sent to President Bush for approval in late September.<sup>165</sup> But, as expected, on September 28, the President vetoed the bill.<sup>166</sup> President Bush claimed he vetoed the legislation because "it would have placed unworkable constraints on our bilateral trade and would have adversely affected the dynamic market oriented regions of Southern China and Hong Kong, as well as those Chinese who support reform and rely on outside contact for support."<sup>167</sup>

On September 30, 1992, the House voted 345-74 in favor of overriding the President's veto.<sup>168</sup> It is important to note that "[this] was 65 more votes than were actually needed."<sup>169</sup> However, the Senate, on October 1, sustained the Presidential veto.<sup>170</sup> Unfortunately, "the Senate vote of 59-40 fell eight votes short of the two-thirds majority required to override" the veto.<sup>171</sup>

## VII. THE APPROACH OF THE CLINTON ADMINISTRATION

"It is MFN that the Chinese government cares about and as long as the administration refuses to condition MFN, the Chinese government will not take our concerns seriously . . . ."<sup>172</sup>

The United States should formulate a policy that can replace the Republican approach of "constructive engagement," which was originally

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163. *Id.*

164. *Veto of China MFN Restrictions Upheld*, FACTS ON FILE WORLD NEWS DIG., Oct. 8, 1992.

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. *Bush Urged to Push for Human Rights Improvements in Red China*, CENT. NEWS AGENCY, Oct. 12, 1991 (statement by Congresswoman Pelosi), available in LEXIS, News Library, CENEWS File.

designed to influence China's behavior by friendly persuasion.<sup>173</sup> Thus far, the Clinton Administration has wavered in its commitment to supporting legislation that imposes human rights, arms control, and trade conditions on the renewal of China's privileged trade status.<sup>174</sup>

There were strong indications at first that President Clinton would deal more firmly with the abuses in China than his predecessors. President Clinton's discourse on China throughout his campaign was consistently tough.<sup>175</sup> For example, during President Clinton's acceptance speech at the Democratic convention, he sent a strong message to the Chinese leaders when he pledged to stop "coddling tyrants from Baghdad to Beijing."<sup>176</sup> Also, during the election campaign, President Clinton declared that he would embrace a tougher attitude towards China.<sup>177</sup> "In his campaign book, *Putting People First*, [he] said that the Bush Administration had 'erred' in extending MFN trade status to China before it had achieved 'documented progress' on human rights."<sup>178</sup> Additionally, he stated that China should not be rewarded with improved trade status, "when it has continued to trade goods made by prison labor and has failed to make sufficient progress on human rights."<sup>179</sup>

"President Clinton had presumably made his stand against unconditional renewal of China's MFN status known."<sup>180</sup> He indicated that he would endorse legislation to attach conditions on China's MFN status. In early February 1993, Speaker of the House Thomas Foley (D-Wash.) echoed the position espoused by President Clinton during the campaign.<sup>181</sup> Speaker Foley stated that the United States "would increase

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173. Dan Cordtz & Richard Meyer, *Inside China Today*, FIN. WORLD, Feb. 8, 1993, at 36.

174. *Id.*

175. Gerald F. Seib, *Clinton Could Get Tough with China Without Hurting Ties Analysts Say*, WALL ST. J., Nov. 17, 1992, at A20.

176. *China Congratulates Clinton, Warns Against Dropping MFN*, JAPAN ECON. NEWswire, Nov. 5, 1992.

177. *China Foresees No Change in US Relations Due to "Languishing" US Economy*, SUMM. OF WORLD BROADCASTS, Nov. 7, 1992.

178. *President-Elect Clinton Seen Pursuing Aggressive Trade Policy to Open Market*, DAILY REP. FOR EXEC., Nov. 5, 1992.

179. *Id.*

180. *U.S. Business Leaders Call for Maintaining Normal Trade Ties with China*, THE XINHUA GEN. OVERSEAS NEWS SERVICE, Oct. 24, 1992, available in LEXIS, News Library, TXINHU File.

181. *Foley Says U.S. Will Press China on Human Rights*, JAPAN. ECON. NEWswire, Feb. 10, 1993.

pressure" on the Chinese government to improve its human rights situation and, if necessary, would alter China's "privileged trading status."<sup>182</sup>

In 1993, President Clinton followed through with his campaign promise to be tough with China and issued an executive order which linked human rights and trade benefits. He stated that China's privileged trade status would not be renewed unless the Beijing government significantly improved its human rights record. The order required, for example, "overall, significant progress," adherence to the Universal Declaration of Human Rights and the release of political prisoners.<sup>183</sup>

However, just one year later, on May 26, 1994, President Clinton decided to renew China's MFN trading status despite China's limited progress on human rights. He stated, "I have decided that the United States should renew Most Favored Nation status for China" because it offers the United States "the best opportunity to lay the basis for long-term sustainable progress on human rights and for the advancement of our other interests in China."<sup>184</sup> President Clinton's decision to de-link China's trade privileges and human rights represents a clear turnabout from his position of a year ago when he issued the executive order making progress on human rights the sole condition for renewing China's trade status.

Congress' reaction to the President's decision was mixed. Top Democrats, such as Senate Majority Leader George Mitchell and Congresswoman Nancy Pelosi, reacted with dismay. As a result, Senator Mitchell and Representative Pelosi have started collaborating on legislation that would impose broad sanctions on China by targeting products produced by the Chinese military and other state-run industries.<sup>185</sup>

President Clinton, in his decision to extend MFN trading status to China unconditionally, has in effect removed all pressure on China to improve its human rights practices.

### VIII. CONCLUSION

It has been five years since the pro-democracy movement, and the Chinese government continues to commit sweeping violations of the fundamental rights and freedoms of its citizens guaranteed under various

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182. *Id.*

183. *Regulation, Economics and Law*, BNA, June 1, 1993, available in LEXIS, News Library, DREXEC File.

184. Lyndsay Griffiths, *U.S. to Renew China's MFN Privilege*, Reuters North American News, May 26, 1994, available in LEXIS, News Library, REUNA File.

185. Lyndsay Griffiths, *Clinton Set to Renew China MFN; Foes Raise Alarms*, Reuters World Service, May 26, 1994, available in LEXIS, News Library, REUWLD File.



international instruments. The time is long overdue for the Administration, together with Congress, to craft an effective human rights policy towards China. President Clinton is in the position to send a strong message to the leaders in Beijing. China should only expect to be rewarded with an unconditional renewal of MFN status if it significantly improves its human rights situation.<sup>186</sup>

"Beijing's human rights record is so abysmal that it does not deserve normal relations with any country that values freedom and democracy."<sup>187</sup> The United States should not ignore China's intolerable human rights record even if other countries choose to do so.<sup>188</sup> The United States should demand that China allow the Red Cross and other human rights organizations unlimited access to China's prisons so they may be inspected.<sup>189</sup> The United States should also demand that China publicly account for all political prisoners.<sup>190</sup> The United States' interests would be better served if the Administration pursued the human rights situation in China with the help of "friends" around the world, specifically Beijing's other trading partners. For example, President Clinton should seek Japan's assistance in sending China an unambiguous message—namely, that its present human rights record will not be tolerated.<sup>191</sup> In 1992, China received \$1.1 billion in bilateral aid from Japan, which is more than from any other country.<sup>192</sup> The Administration, however, should not use the above as a substitute for conditioning China's MFN status. It should serve only to bolster the United States' position.

It seems unwise for President Clinton to follow in President Bush's footsteps and base his foreign policy towards China on the unrealistic hope that China's rapidly expanding market economy will give rise to a less repressive government. If China is to join the ranks of major trade partners, it will have to conform, both internally and externally, to international standards. "The Administration should adopt a tough realistic policy that pushes China . . . [toward] a freer exchange of ideas and greater respect of human dignity."<sup>193</sup>

*Robbyn Reichman-Coad*

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186. Jendrzejczyk, *supra* note 136, at A13.

187. *Don't Listen to Beijing's Siren Call*, HARTFORD COURANT, Sept. 12, 1992, at B6.

188. *Dealing with China*, CHRISTIAN SCI. MONITOR, Sept. 14, 1992, at 20.

189. Jendrzejczyk, *supra* note 136, at A13.

190. *Id.*

191. *Id.*

192. *Id.*

193. *Id.*